

RR-103868-08

Part I

Section 126.—Certain Cost-Sharing Payments
Forest Health Protection Program

26 CFR 16A.126-1

Rev. Rul. 2009-23

ISSUE

Is the Forest Health Protection Program (FHPP) substantially similar to the type of programs described in § 126 (a)(1) through (8) of the Internal Revenue Code, so that the FHPP is within the scope of § 126(a)(9) and, thereby, all or a portion of cost-sharing payments received under the FHPP is eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The FHPP, authorized under the provisions of § 8 of the Cooperative Forestry Assistance Act of 1978, Pub. L. No. 95-313, 92 Stat. 368, as amended by Title XII, § 1218 of the International Narcotics Control Act of 1990, Pub. L. No. 101-624, 104 Stat. 3525, 3531, is a program to protect forests, trees, and wood products, stored wood, and

wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States.

The U.S. Forest Service administers the FHPP on behalf of the U.S. Department of Agriculture (USDA), by working in partnership with state forestry and agriculture agencies. The state agencies work with nonindustrial private forest landowners to identify and implement appropriate management practices. The FHPP includes cost-sharing assistance to landowners that volunteer to participate in the program.

A landowner who wishes to participate in the FHPP must enter into a contract or cooperative agreement with the USDA pursuant to which the landowner agrees to establish an acceptable integrated pest management strategy as determined by the Secretary of Agriculture that will prevent, retard, control, or suppress gypsy moth infestations, southern pine beetle infestations, spruce budworm infestations, or other major insect infestations and receives cost-sharing payments in exchange. The cost-sharing payments under the program are not less than 50 percent and not more than 75 percent of the cost of implementing the pest management strategy.

The Secretary of Agriculture has determined that cost-sharing payments under the FHPP are primarily for the purpose of conserving and restoring woodlands resources. In addition, the Secretary of Agriculture has informed the Treasury Department that the USDA believes that the FHPP is a small watershed program.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1)

through (8). Section 126(a)(9) provides that a small watershed program administered by the Secretary of Agriculture also is eligible for § 126 treatment if the Secretary of the Treasury or his delegate determines that the program is substantially similar to the type of programs described in § 126(a)(1) through (8). See § 16A.126-1(d) of the Temporary Income Tax Regulations Relating to the Partial Exclusion for Certain Cost-Sharing Payments for rules permitting the Commissioner to make these determinations and announce them in the Internal Revenue Bulletin, and for the definition of “small watershed.”

If the Commissioner has determined that a program is substantially similar to the type of programs described in § 126(a)(1) through (8), taxpayers receiving cost-sharing payments under that program must determine what portion (if any) of the cost-sharing payments is excludable from gross income under § 126. Under § 126(b), the excludable portion of a payment is limited to the portion that (1) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, (2) does not increase substantially the annual income derived from the property, and (3) is not properly associated with a deductible expense. See § 126(b) and § 16A.126-1, relating to the partial exclusion of certain cost-sharing payments, to determine what portion of the cost-sharing payments is excludable from gross income under § 126.

HOLDING

The Internal Revenue Service accepts the USDA's conclusion that the FHPP is a small watershed program. Accordingly, the FHPP will be treated for purposes of § 126 as a small watershed program administered by the Secretary of Agriculture. In addition, the Commissioner has determined that the FHPP is substantially similar, within the meaning of § 126(a)(9), to the type of programs described in § 126(a)(1) through (8).

Payments received under the FHPP are limited to a percentage of the cost of implementing an integrated pest management strategy and qualify as cost-sharing payments. The cost-sharing payments received under the FHPP are eligible for exclusion from gross income to the extent permitted by § 126.

See § 126(b) and § 16A.126-1 to determine the extent to which cost-sharing payments under the FHPP are excludable from gross income under § 126.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Ms. Bernardini at (202) 622-3110 (not a toll-free call).